Radboud University Nijmegen

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The Social Processes in Urban Planning and Management

International Seminar on Legislation and Urban Management
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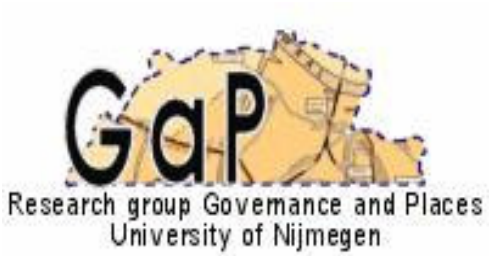

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Session: The social processes in urban planning and management

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RULES, PROCEDURES, PROCESSES AND ORGANISATIONS: THE EXPERIENCE WITH URBAN PLANNING IN SOME COUNTRIES OF WESTERN EUROPE

I have been asked to tell you about the practices, and about the experience with those practices, of urban planning in some countries of Western Europe, with an emphasis on the social processes. That I am going to do. But before I do it, I am going to make some *general points* about urban planning and management. This should help you to see which aspects of that European experience might be useful in your country.

1. The planning and management of urban land

I concentrate on the *planning and management of urban land*, because this is crucial to the more general activity of urban planning and management. And I take the structure of my talk from the syllogism:

- the way in which urban land is used is extremely important, both socially and economically;
- people will not want to use urban land, or will not be able to use it efficiently, unless that use is co-ordinated in some way;
- therefore the planning and management of urban land is important.

Everyone will agree with the *first step* in my argument. The way urban land is used affects the chances which people have in getting decent housing; it affects the distances which people have to travel to get work, visit family, go to the post office, etc.; it affects the willingness of people and firms to invest in infrastructure, offices, hotels, etc.; it affects the price which people have to pay for housing and the security which they have in that housing; it affects the possibility of amassing reserves and the distribution of wealth; it can have effects on the quality of air and water; and so on.

Not everyone will agree immediately with the *second step* in my argument: namely, people will not want to use urban land, or will not be able to use it efficiently, unless that use is co-

ordinated in some way. This is such an important point, and there are so many misunderstandings about it, that I shall discuss it more fully in the second section of this paper. This I do by naming some common mistakes about the planning and management of urban land, and correcting those mistakes. For the moment, I do no more than ask you two questions. Would you, if you had the chance, buy a plot of land in order to build an office block on it, if you knew that the day after you had bought it, someone else could move onto the land and start to build a hotel on it? And would you be prepared to start a factory, if there was the possibility that, on vacant land nearby, someone would build expensive housing and take out a court action to close your factory because of environmental nuisance? Both those examples concern rules about using land. With those examples I hope to have shown that the planning and management of urban land is more than *possibly useful*: it is *indispensable*.

The conclusion follows: the planning and management of urban land are important, in all countries. You obviously agree, otherwise you would not be here for these two days. But you want to go further. You want to know: what kind of planning and management? In particular, what can be learned from the experience in some countries of Western Europe? This is the third part of my talk.

2. Some common misunderstandings about the planning and management of urban land

I promised to make some general points about the planning and management of urban land, which should help you to see which aspects of European experience might be useful in your country. These points are corrections of some common misconceptions, that is mistakes which many people make when thinking about urban land.

Mistake 1

That it is possible to make a distinction between social processes and economic processes.

'Don't think economics, think society,' said Lindblom (2001). Economic processes are those in which scarce goods and services are supplied, demanded, produced, consumed, exchanged, priced, saved, distributed, transferred, etc. But those processes are so embedded in the society and are so shaped by the structures and rules of the society, including the political rules and

structures, that most economic processes cannot be studied concretely without placing them in the society within which they take place. This will become clearer in the course of this presentation.

This is the reason why I raise many *economic* questions, although this is a panel on *social* processes. Social processes cannot be understood, nor changed, without taking account of the economic processes and the rules which shape those processes: and vice versa.

Mistake 2

That there is a choice between letting urban land be used without rules, and with rules.

How urban land is used can be discussed as an example of what has been called 'the co-ordination of social life' (Frances et al. 1991). This refers to the fact that living in society requires an enormous amount of co-ordination between the members of that society. That is sometimes difficult: but it can bring enormous benefits. For one person has something that another person wants, and vice versa: so if an exchange can be co-ordinated, both parties are better off.

Applied to urban land, one person has land in a location where another person wants to operate: can an exchange be negotiated? If an agency were to construct a new road, people in many other locations would benefit from that: can some of their gain be used to persuade the agency to build the road? Somebody operating a factory wants to be able to recruit labour, so people must live within a reasonable distance of the factory: how can their land wishes be co-ordinated with the wishes of the factory owner?

There is a myth, or perhaps a wish, that 'the market' can solve all such problems of co-ordination. Let people 'get on with it', prices will arise, profits and losses will be made, people will react to those prices, profits, and losses, and in that way co-ordination will come about. Rules imposed from above are not necessary: in fact, they get in the way of the efficient functioning of the market. This is a relatively recent idea: in medieval and colonial times, it was accepted that rules were necessary for urban land markets to work well. It is the rise of liberal capitalism which has brought the ideology that markets work best with the minimum of rules.

However, most co-ordination requires rules, formal and informal. The more important and valuable is the thing exchanged, the more important are those rules. This means that people will often require that they are formal rather than informal. This is usually the case when land, or the right to use land, is exchanged. The exception, which Ellickson (1991) called 'order without law', is found only in traditional and small-scale societies, where people know and trust each other. Those are not the circumstances in big cities.

The most important type of rule for urban land is the property right. This gives someone the right to use a particular plot of land in a particular way, where that right is protected by the courts. That last clause is crucial. If the courts will not protect a particular way of using a particular piece of land by a particular person, that person has no right in that land. And that person will not be prepared to enter into any negotiations about that land.

It is interesting that even those who want the minimum of rules for using urban land nevertheless want the certainty that well enforced property rights bring. For without such rules, a Hobbesian 'state of nature' prevails, which can be highly cruel and inefficient. Land is taken by those not with the most money but with the strongest private army. It is then that the life of man is 'nasty, brutish and short', as Hobbes put it.

Mistake 3

That there are only two types of property rights, private ownership of land and public ownership of land.

This misconception is highly ideological. The argument goes as follows: rules for property rights are indispensable, for these protect private property; some urban land must be in shared use – such as roads – otherwise private property cannot be used; so some land must be in public ownership; land in public ownership should be managed for the most efficient use of private property. Blomley (2004) calls this ideology 'the ownership model'.

In fact, there is a huge variety of property rights. The variety in feudal times was even greater than now, for land was then the basis for social and economic relationships. It is important to distinguish between rights to *own* land, and rights to *use* land. For the right to use land can be held by someone else than the owner, and it can be a right which influences greatly how cities work and who benefits from that. But only if it is a strong right protected by a court of law.

This can be illustrated with a well known example. Many people are socially and economically dependent on the right to rent a house and/or the right to rent agricultural land. If that right is not well protected, the owner of the house or land can evict the tenant easily. A less well known example is that of Epping Forest, a huge medieval forest still standing to the east of London. In the 19th century, the owner wanted to sell the land, so that it could be built upon. But many 'commoners' had the perpetual right to all the wood growing on the trees above the height of 2 metres. They would have lost that right if the trees had been felled. They appealed to the highest court of law against the proposal to build upon the land. They won, and Epping Forest still stands today.

Mistake 4

That the planning and management of urban land is about setting the rules for the activities of state agencies.

Such rules are about granting or refusing planning permissions, and therefore about making land-use plans, they are about providing infrastructure, about charging for infrastructure, about land expropriation, etc. The political discussion focuses on these rules. For what kinds of building works must planning permission be granted? If permission is refused, should the state agency pay compensation? How flexibly may those rules be applied? Must the application for a planning permission be publicised in advance? And so on.

However, we have seen already that there is another type of rule which is important for urban land: rules about property rights. These too must be set.

Both the public-law rules exercised by state agencies and the private-law rules exercised by the owners of property rights influence the way that urban land is used and, therefore, how cities work. And the effects of applying public-law rules depend on the private-law rules, and vice versa. In other words, both sets of rules interact with each other.

In particular, the measures taken by state agencies do not work if there are no good private law rules. We can see this at a very simple level: planning regulations work by influencing the use of property rights, and if it is not clear who has which property rights, the regulations cannot work. Moreover, the way in which those measures work depends on the content of the private law rules. For example, the owner of land in England owns a different set of rights than the owner of land in the Netherlands: as a consequences, it is easier to attach financial conditions to the granting of planning permission in England than in the Netherlands.

Mistake 5

That the planning and management of urban land is about restricting the exercise of private property rights, in the public interest.

The idea that the planning and management of urban land is about state agencies restricting the use of private property rights, has a great ideological force. For property rights should be protected. And restriction is best avoided, unless it is inevitable. So how can the restrictions imposed by urban planning be politically justified? The answer is: if they are in the public interest.

It is a mistake, in my opinion, to think in those terms. For 'the public' is then made into an amorphous mass of unidentifiable persons who must be protected (Bromley 1991: 19). But in reality, when land-use plans restrict the activities of land owners, that is done to protect the interests of others, who usually can be identified. All the people who live in cities have interests in how land is used. If you *own* land, you have an interest in how you may use that: that interest is protected by a property right. If you own land, you have an interest in how your neighbour uses her land and you want to influence that, even though your neighbour's property right is protected. And even if you do *not* own land, you can still have an interest in how others use their land: does that generate a lot of traffic on your road? does it pollute the air that you breathe? does it reduce the amount of open space where your children can safely play? Urban planning is about protecting the interests in land which are not protected by property rights!

Mistake 6

That there is a choice between letting the market determine how urban land is used, and excluding the market.

The use of urban land is the outcome of many people taking decisions about how to use their land, where those decisions are taken within rules under both private law and public law. When people take those decisions under private law, we say that they are working 'in the market'. The public law rules of planning permissions, expropriation, etc. are not indispensable: urban land markets can work without them, although they may not work well under such circumstances. If there are no public-law rules, the way in which urban land is used is determined exclusively 'by the market'.

On the other hand, it is impossible to conceive of decisions being made about how to use urban land, where all private decisions are excluded and the use is determined exclusively by a state agency using public law rules (Lindblom 2001). In other words, the market cannot be excluded from decisions about using urban land.

The choice is, therefore, not between letting the market determine how urban land is used on the one hand, and determining that use by regulations on the other hand. The real choice is about the public law regulations which should be *added to* the market.

We can now make the connection with the statement made above, that the market works according to private law rules. The conclusion then becomes: urban planning is in the first place about determining the private law rules (property rights) by which the market should work, in the second place about determining the public law rules to supplement (but not replace) those private law rules.

Mistake 7

That the planning and management of urban land is about replacing informal markets with formal markets.

Economists often have an idealised picture of markets. There are many buyers competing against each other to acquire the same goods, there are many sellers competing against each other for the favour of the buyers, there is anonymity (the buyers and the sellers do not know each other), and prices arise which 'clear the market', that is, price is the mechanism which co-ordinates the interactions between the buyers and the sellers. We call this ideal 'a formal market'.

There are, of course, other ways in which the exchange of urban land can be co-ordinated. In particular, deals can be made through personal contacts, which can be both family networks and 'old boy networks'. If deals are made in this way, that does not mean that no price is paid for the land. But it does mean that the price which *is* paid does not necessarily reflect the objective worth of what is exchanged. For the price does not have to be that which 'clears the market'. We still call this a market, but an 'informal market'.

In countries outside Western Europe, where much real estate is exchanged through informal markets, many people think that most exchanges in Western Europe take place in formal

markets. That is incorrect: much exchange of land in Western Europe also uses informal markets. Empirical work in the Netherlands shows that much agricultural land is exchanged between family members for a much lower price that when it is exchanged outside the family (Buurman 2003), also that much land for house building is not offered 'on the market' and is acquired through contacts (Needham & De Kam 2004).

When land is exchanged through the informal market, this does not mean that the exchange is not registered formally. Formal registration is important to protect the rights of the person who has acquired the land. But it does mean that demand and supply are not advertised, they are not made public, the price paid is not made public, no one knows how much land is exchanged, etc.

Mistake 8

That formal land markets are better than informal.

It is not surprising that this mistake is often made, for many economists believe that formal markets are better because they use the price mechanism, and the price mechanism leads to the best use of scarce resources. I call this a 'belief', and I feel secure enough to say this because I too have a training in economics. (In Needham 2005 chap. 4, I discuss and criticise this belief).

What could we mean when we say that one way of managing urban land (e.g. through formal markets) is better than another (e.g. through informal markets)? There are at least three aspects to 'better':

- more effective in realising the goals adopted by the society for housing, for transport, for the environment, etc;
- economic resources are used more efficiently;
- the advantages and disadvantages are distributed in a way which the society considers desirable (including the distribution between generations).

I have found no reason for concluding that formal markets are necessarily better – in those respects – than informal markets.

I argued above that markets do not work without rules, that such rules can be made and changed, as a result of which markets can be *structured* by those rules. That applies to both

formal and informal markets. We are familiar with the argument that formal markets might not work well (market failures) and that they can be structured so as to work better. So we have rules, for example, to break up or to regulate monopolies and to correct for what economists call the 'external effects' of private decisions.

That applies also to informal markets: they too will work better – in the sense given above – under certain rules than under other rules. In particular, there should be rules to guarantee the outcomes – the property deals – of the agreements made informally about land. Such rules are:

- a good system of private property rights;
- a reliable registration of those rights;
- fair and reliable courts and judges which will, if requested, support those rights.

Without such rules, people are insecure in how they may use the land which they have acquired.

3. The planning and management of urban land in some countries of Western Europe: the experience over the last 150 years

With the way in which I have defined the planning and management of urban land, there is experience over a much longer period than 150 years. Property rights – one of the indispensable rules, as we have seen – have been regulated for thousands of years, and in urban settings for a few hundreds of years. In urban areas, the property rights regulating nuisance have been, and still are in some countries, particularly important. And there have been rules in addition imposed by the public authorities, about the width of streets, about connections to water and drains, about fire prevention, etc. I go back only 150 years, because it was not until around 1850 that industrial cities arose, the necessity of urban land management became evident, and the bigger cities started to introduce this. I am thinking in particular of Vienna, of Paris, of Berlin, of London, of Birmingham. What are the most important conclusions that can be drawn from that long experience?

I do not intend to make distinctions between those various countries. That has been done elsewhere, and systematically, for urban land and property markets in six countries (European

urban land and property markets), for spatial planning systems in 16 countries (Compendium 1997), and for the range of legal and administrative systems in Europe (Newman & Thornley 1996). This is not the place to summarise those studies.

Nor am I going to talk about the *content of the policies* pursued in those various countries of Europe: whether or not to protect town centres, mixed uses or single uses, public transport or more roads for cars, combining land-use planning with environmental policy, designating and protecting national parks, green belts or finger development or linear development, whether or not to allow out-of-town shopping centres, and so on. I do not do that, for I know insufficient about Brazil to be able to say which of those policies, if any, is relevant in this country.

What I am going to talk about is the *general* experience from countries in Western Europe about *rules, procedures, processes and organisations* for the planning and management of urban land. For I think that that experience is relevant to countries outside Western Europe, including Brazil.

Experience 1

There must be a well-funded public authority charged with urban land management and staffed with honest and capable officials.

The basic task of those officials is to make and implement land-use regulations, sometimes supplemented by providing infrastructure. It is clear that those officials must do that professionally and impartially.

Sometimes the public authority does more, namely dealing in the land market itself: buying and selling land. There is a good and defensible argument for doing this, namely that some of the public activities (especially infrastructure investments) cause land values to rise, and a good way of recouping the costs of those investments is by owning the land to be benefited. However, a public authority which does that is faced with temptation! For it wears two hats: it must act neutrally and regulate others in the public interest, but it can also act to defend its own financial interest. And that conflict of interests can damage the public authority's reputation as a neutral arbiter.

In saying this, I don't want to give the impression that I am comparing honest regimes in the developed world with corrupt regimes in the developing world. For nowhere is that conflict of

interest more apparent than in the Netherlands, where municipalities are very active on the land market. It does not always do their reputation good!

Experience 2

The public officials should have a good knowledge of land economics and real estate law and finance.

This also should be obvious. There are some very clever people working for private companies operating in urban land markets. If the public officials with the task of controlling and regulating them are not equally clever and well informed, the private companies will be pleased to exploit their advantage. It is desirable that public officials charged with land management and those working for private companies have the same professional training.

Again I give the bad example of the Netherlands. The officials who deal in land for the municipalities have received a training which is different from that received by the commercial parties who operate in real estate, a training moreover which is given in a separate college for civil servants. The result is that the public and the private experts do not speak the same language, that they approach problems differently, and that they often do not respect each other's expertise.

If the public authority decides to deal in land (in spite of my warning against doing that), this places public money at risk. At the end of the 1970's, many Dutch municipalities had bought a lot of land which they intended to bring into development. That was a mistake, caused partly by the professional incompetence of those working for the municipalities. Private companies had been much more cautious. Then the property market collapsed. Those municipalities would have gone bankrupt if that had been possible for a state agency, for the debt burden on the land lying idle was enormous.

Experience 3

The public authority must work openly, and must make information available freely to all.

This is a basic rule of good government. But does it always apply to urban planning? The question arises because many of the measures which the public authority can take, affect the value of real estate. It follows that if it is known that such measures are being prepared, speculative buying and selling can take place. One of my first jobs in land-use planning was

with a consultancy charged with preparing a plan for a new town in England. Our work had to be done in deepest secrecy, for it must not be known before the official date of designation where the new town was to be built, for land prices would rise there as soon as the location was made known. I had an uncomfortable feeling about working under those rules.

The question of openness is even more difficult when the public authority itself is financially involved in land deals. For if the negotiations around those deals have to take place openly, the other party has an unfair advantage: the negotiating position of the public authority has been seriously weakened. It will be seen that this is one more example of how a public authority which actively deals in land, places itself in an uncomfortable conflict, between its role as a defender of the public interest and its role as a market actor.

My position in this is that the public authority should always work openly. Also, it should not get involved in land deals. But it cannot avoid taking regulatory measures, which affect land values, such as changing a land-use plan. And it can often happen that a public authority decides to build a new road, or some such, which will cause property values to rise. How open should a public authority be in those situations? My answer is that there should be rules (laws) which neutralise or diminish the financial gains caused by such public measures. Then those measures can be discussed and taken openly, without fear of the financial consequences for a few landowners. There is a clear link here with the question of land taxation to be discussed later in this seminar.

Experience 4

There must be citizens, working in and supported by private organisations, who are interested in how the city works and are well enough informed to challenge the public authority if they consider that necessary.

Even if the officials of the public authority are highly educated and very honest, even if the public authority does not put itself in compromising situations by dealing in land, there is still no guarantee that the public authority will always pursue a planning policy that is best for its citizens. For a public authority can make mistakes, as we all can. There can be differences of opinion about what will happen in the future. Conflicting interests can be weighed up in various ways. It is then that there is a need for citizens who are well informed about how the city works, who are concerned that it work well, and who are prepared voluntarily to spend time and energy to achieve that.

The public authority should put procedures in place to encourage such disinterested involvement by its citizens. One of the most interesting evenings that I have spent in planning was in 2003 at a meeting of the Planning Advisory Board of the City of Cambridge, Mass. The members of that board were citizens appointed by the mayor to advise on planning matters. As one would expect in a town which accommodates Harvard University and the Mass. Institute of Technology, the members of the board were both expert and concerned. The meeting was open to the public, and seldom have I more enjoyed hearing a discussion between planning professionals, acting without any financial interest.

What did the mayor of Cambridge do with the advice of that board? I do not know. But I think that he took it seriously. Otherwise these citizens would not have been willing to put time and energy into the board. More generally, the public authority must be open to criticisms from all quarters, and must take that criticism seriously. I am informed that a large number of municipalities in Brazil have advisory councils, formed by public officials and representatives of social organisations, which are concerned with the quality of urban planning and management.

Experience 5

Those citizens must respect the competences of the public authority and accept the legitimacy of its tasks, while at the same time having a healthy distrust of those wielding power.

There should be no doubt about the need for some kind of urban planning, nor that it is a task of a public agency to carry that out. The agency has been given public powers for doing that - zoning, public health laws, expropriation, etc – and as long as the agency uses those powers according to the prescribed rules, the legitimacy of that task should be respected.

It strikes me sometimes how that respect differs between countries. In the Netherlands, for example, nobody disputes the need for public planning. There are discussions about the *content* of that planning, but not about the *legitimacy* of this public task. The reason for this respect lies, partly, in the fact that public agencies have shown in the course of many hundreds of years, that they can perform that task well. If they had not been able to, a lot of the Netherlands would now be under water!

So public authorities must earn respect as planners of urban land. The irony is that, in order to earn that respect, the authority must be granted powers and money and must attract capable professionals. But the authority will not be granted those if it has not earned the public's confidence. That is a vicious circle which it is very difficult to break out of. I sometimes wonder if that is one of the reasons why the legitimacy granted to public bodies for land-use planning is less in England, and even less in the United States, than in the Netherlands, or France, or Germany, of Sweden. For in those latter countries, public authorities have earned a reputation for, and have consolidated a position in, the planning and management of urban land. But how does a young country start?

Respect for a public authority planning the use of land should not, however, be uncritical. The exercise of public powers should always be viewed with a certain amount of suspicion. 'The price of freedom is eternal vigilance' applies to public planning too. Otherwise, those holding power can be corrupted by their power: as Lord Acton said: Power tends to corrupt, absolute power corrupts absolutely.
So citizens, who have granted a public authority respect for the way it has planned and managed urban land, must demand that that authority continually earns that respect anew.

Experience 6
There must be legal possibilities for those citizens and their social organisations to influence the content of the public policies and also to change that later.
A public authority which takes its task of urban planning seriously can exercise enormous influence on the way people use their property rights, and also on the value of those rights. That is the effect of such 'ordinary' measures as granting or withholding building permissions, giving subsides to or levying taxes on land, providing infrastructure, etc. And it is not only the holders of property rights who are affected. For other citizens too have an interest, albeit indirect, in the land and buildings where they live and work. So it is correct that there are formal procedures for the public to influence the exercise by a public authority of its public powers.

We can distinguish between two stages where that influence must be possible. The first is when the policy for urban land is being drawn up. There should be rights of public participation in that stage. The second is after the policy has been adopted and when it is

being implemented. Then there should be the possibility of lodging an appeal against a measure such as granting or withholding permission to build.

It may be wondered why it is desirable to give the citizens influence in two stages. For if that influence is strong in the first stage – when policy is being made – why is it necessary to allow for it in the second stage, which is no more than implementing the decisions made in the first stage? There are two reasons. One is that circumstances can change between the policy making and the policy implementation: so the public authority might quite understandably want to take implementation measures which deviate from the adopted policy. The second reason is that the public authority might not take the implementation measures as it ought to: it might not be impartial, it might be careless, it might not follow the correct procedures. In this case too, a suspicion of public authorities wielding powers is healthy and needs to be backed up with formal possibilities for checking the public authority and correcting its actions.

There are many examples in the Netherlands and elsewhere in Western Europe where a court of appeal has supported citizens who have appealed against a planning measure proposed by a public authority. And the reason why the court has supported the appeal has been that the public authority had not acted impartially, or had favoured some economic interests disproportionately, or some such. It is unfortunate that those appeals were necessary, also that there are so many of them. But the decisions of the court of appeal can improve that quality of the planning and management of urban land, and remind public authorities of their special responsibilities.

Experience 7

If a public authority wants to use its planning regulations flexibly, it should do that with the utmost care and should justify that use openly.

Many of the cases mentioned above, where citizens and private organisations have gone to a court of appeal and won their case, have been cases where a public authority has not wanted to be bound to its own planning policy. It has adopted a plan, possibly after good public participation. The citizens are pleased with that policy. And then the public authority interprets it flexibly, possibly contrary to the wishes of those involved in the public participation.

The question of flexibility in maintaining a land-use plan is complicated: we know that. For a plan is drawn up and adopted under one set of circumstances (such as economic and demographic change), and those circumstances can change during the legal life of the plan. If someone should apply for a planning permission which is contrary to the plan, but which is desirable under the *new* circumstances, is it not sensible that the public authority use its own plan flexibly and grant the permission?

The answer is: Yes, of course! But does that not make a mockery of the public participation and other political and democratic procedures followed when making the plan? The answer is: Yes! And that makes the citizen cynical and suspicious, especially if the public authority stands to gain financially from granting that permission, for example by selling land in its possession.

The solution to that dilemma is procedural. If the public authority wants to grant permission contrary to the legal plan, it should do that openly, should justify that decision fully, and should give the citizens the right to object formally.

Experience 8

There must be a good system of private law for defining and protecting the land and property interests of the citizens.

In the first section of this talk I said that urban land markets do not work, or do not work well, without a good system of property rights. For those provide part of the formal rules which are indispensable for such markets. Three aspects of property rights rules are important.

One is well known: that the courts should protect the legitimate exercise of those rules fairly and impartially. Otherwise, the strongest always win. Better the strength of the law than the law of the strongest! The relationship between ownership rights and user rights is important here. For the owner (such as the landlord) is in a stronger position than the user (such as the tenant), unless the user rights of the tenant are well protected.

The second aspect concerns the content of those property rights. Are they clear? Do they leave loopholes? What types of interests does the law protect through property rights? Does a landless person have property rights? Does a tenant have the right to transfer the tenancy, for example within the family? What rights does a squatter have?

The third aspect concerns what economists call 'the initial delineation of property rights'. The outcome of a market in property rights is strongly influenced by the starting position. If a *few* people have *all* the property rights, the outcome will be different than if *many* people have *some* property rights, even if it is only user rights and not ownership rights. The example of Epping Forest has already been mentioned: the user rights of the commoners protected their interests effectively.

It is often thought that property rights are an instrument to protect the position of the rich and powerful. That need not be so. Blomley (2004) wrote: 'the Left should re-appropriate property rights (p.154) … Property relations can be the means by which people find meaning in the world, anchor themselves to communities and contest dominant power relations. (p.156)'.

Finally, let me remind you that the way in which the *public law* rules of urban land management work depend on the content of the *private law* rules of property rights. If, for example, user rights can be bought and sold, the changes in value caused by land-use plans accrue to the tenants and not to the landlords.

Experience 9

There must be checks and balances to prevent a few rich private interests manipulating the public land and planning system for their own ends.

Not long ago, the Secretary of State for the Environment in the Netherlands defended his decision to continue giving public subsidies to pressure groups which attacked his policies. The reason, he said, is that not everyone has the same possibilities for influencing public policy. In particular, rich interests usually have very close access to the ear of the policy makers. In a democracy, said the Secretary of State, everyone should have the same possibilities.

That illustrates well the desirability of measures for preventing the rich and the powerful from using for their own interests the planning and management of urban land by public bodies. The example shows how subsidies to the less powerful can be used for this. Another way is by being completely open throughout all stages of the policy making and implementation. Yet another way is by making the procedures for public participation and appeals easily accessible to all.

In England, to give you an example of how not to do it, decisions about very big development projects are often made at a 'public inquiry'. Interested parties put their case to a 'planning inspector'. Very expensive lawyers are employed by rich interests to advocate their case. Poorer interests cannot afford that.

Experience 10

There must be clear, fair and predictable rules about how those who benefit financially from public investments in urban infrastructure can be required to contribute to the costs of those investments.

Let me begin once again with an example of how *not* to do this, and again an example from the Netherlands. It became clear about 10 years ago that, for various reasons, the rules for requiring property developers to make a fair contribution to the costs of infrastructure provisions from which they benefited were inadequate. If the municipality provided roads or public spaces in a new housing development, it was not possible to require the developers to pay a fair share of the costs. Some (respectable) developers were prepared to negotiate an agreement with the municipality: but when they saw that other developers (the cowboys) were not, and were as a result benefiting from infrastructure paid for by the respectable developers, the latter became very unhappy. And the respectable developers did not know at the beginning of the process how much they would be paying, for the outcome of the negotiations was not predictable. Moreover, the negotiations could take years, and every change in the plan or in the circumstances led to renegotiations, which took a few more years. This was one of the reasons why the production of housing slumped greatly in the period 2000 to 2003.

The reactions of the respectable developers (not the cowboys) were interesting. Together with the municipalities, they put the central government under pressure to improve the legislation on this point. The commercial developers wanted clear and predictable rules. Obviously, they do not want to have to pay too much towards the infrastructure provisions. But they want rules which will allow the market to work better. It is not only a question of speeding up the procedures, but also of negotiating to acquire the development land in the first case. If the developer does not know until later how much he will have to contribute, he cannot take account of that expenditure when bargaining over the purchase price for the land.

The rules are now being changed in the Netherlands, with a 'land development permit' (Needham 2004). In that country, there is a comparable problem with land re-adjustment projects in rural areas. The unpredictability about who will pay what contributes to the inordinate length of those projects – between 15 to 20 years (Needham forthcoming).

In England and Wales, there is a similar problem. If commercial developers are to be required to contribute to the costs of public investments in urban infrastructure, from which they benefit, this can be regulated only by supplementary 'planning conditions'. These cannot be predicted in advance and the developer can appeal against them. In that country too, this uncertainty can delay development considerably. In that respect, the experience of 'impact fees' used in some states of the USA is better: it is clear from the beginning what the developer will have to pay. And in Germany, the 'Erschliessungsbeitrag' is clear from the beginning. Again, there are links with the question of land taxation, to be discussed later.

Experience 11

The public authority should not succumb to the temptation to cut corners with the prescribed procedures, in order to save time.

The planning and management of urban land by public authorities is ringed with rules, to prevent those authorities from abusing the great powers which they have, and for protecting the citizen against careless use of those powers. But following the rules properly can take an enormous amount of time. A public authority which wants to get things done, which wants to show the world how good it is, which wants to prove how decisively it can act, is tempted to cut corners from the long and cumbersome procedures.

The experience is: Don't. For it can produce one or both of two reactions. One is a growing public distrust in the public authorities: they forfeit any respect they might have earned. The other reaction is even longer procedures: for if citizens who are dissatisfied with that cavalier approach to procedures use the courts to correct the public authorities, the resulting delay is much longer than if the public authority had followed the correct procedures from the beginning.

We can look at this in the light of the concept of 'the public interest'. What do we mean when we say that urban land management should be practised 'in the public interest'? We can mean that the *content* of the public policy for urban land reflects the public interest, in the sense that

it is more in the public interest to choose that content than another content. This claim is, however, difficult to substantiate, particularly in a town where there is great variety in what the citizens want from their land. Do they want big houses or small houses, shops nearby or shops far away, big parks or small parks, etc? We can give another meaning to the concept of the public interest, a *procedural* interpretation (Alexander 1992). Then we say that the public policy for urban land is in the public interest, if it has been formed according to certain procedures. It is interesting that there seems to be more agreement about the *procedures* which public authorities should follow than about the *content* of the policy which results from those procedures. If the procedures have been seen to be open, fair, reasonable, etc., then people are prepared to accept the outcome even if they themselves would have preferred another content.

This is why I say that the public authority should not cut procedural rules. For those rules are what give the policy for urban land its legitimacy. A public authority which is cavalier with those rules undermines its own legitimacy.

4. Conclusions

You are here at this seminar to consider the possibilities of applying the new Brazilian legal system to urban issues. Legal systems are rules. And there is much to be learned from the experience of some European countries in the last 150 years about rules for urban planning. I have tried to distil some general principles out of that long experience.

I want to conclude by putting rules into perspective. Appropriate legal rules are a necessary condition for good urban land management: but they are not, on their own, sufficient. Rules must be used by the right people and in the right way. That is why I have stressed the importance of the public officials, of informed and involved citizens, of trust in the public authorities coupled with a healthy scepticism, of earning confidence, of acting openly. Good urban planning and land management is achieved only when lots of different people think it is important and want to get involved in it. It is not a topic for a few politicians and professionals to decide upon behind closed doors, however, competent and dedicated those people may be. Living in cities is a shared experience. Citizens must have a stake in shaping the platform for that experience.

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